



- (2) Whether the Administrative Law Judge exceeded her jurisdiction in ordering the payment of all outstanding medical bills when the claimant did not advise his employer that such treatment was being received and did not obtain authorization for such treatment.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds claimant suffered a compensable injury to his back on June 4, 1993, while employed with respondent and the Administrative Law Judge did not err in granting compensation for same.

Claimant, an employee of McDonalds in Wichita, Kansas, alleged an injury on June 4, 1993, after suffering a fall at work. This testimony is uncontradicted by other testimony. Medical reports and records placed into the file do indicate claimant suffered aggravations while moving furniture and during two coughing spells subsequent to his termination of employment with respondent.

The Appeals Board acknowledges the evidence in this matter is contradictory, but having viewed the testimony of the claimant and claimant's wife as well as the medical reports from North Suburban Medical Center and from Dr. Gebhard, the treating physician, the Appeals Board concludes the preponderance of the credible evidence, while being admittedly contradictory, does weigh in claimant's favor in this matter.

Acknowledging that it is the claimant's burden to prove by a preponderance of the credible evidence that his position is more probably true than not based upon the whole record, [see K.S.A. 44-501 and K.S.A. 44-508(g)], the Appeals Board finds, for preliminary purposes, claimant has carried this burden and compensation is appropriate.

K.S.A. 44-551 limits the rights of a party to appeal from a preliminary order to the Appeals Board to situations where it is alleged that the Administrative Law Judge exceeded the Administrative Law Judge's jurisdiction in granting or denying the relief requested at the preliminary hearing. K.S.A. 44-534a allows appeal from a preliminary hearing for the specific purpose of deciding whether the claimant suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is timely given or claim timely made, or whether certain defenses apply. The Administrative Law Judge is granted specific authority to decide issues dealing with temporary total disability and medical benefits. As the Appeals Board has found, preliminarily, that the injury did arise out of and in the course of claimant's employment and the Administrative Law Judge did not exceed her jurisdiction in awarding benefits, the Administrative Law Judge's decision regarding payment of outstanding medical bills is not one deemed reviewable by the Appeals Board and said decision will not be disturbed.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Shannon S. Krysl, dated August 1, 1994, remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September, 1994.

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BOARD MEMBER

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c: Joseph Seiwert, 2628 S. Oliver, Suite 104, Wichita, KS 67210  
Lyndon W. Vix, 125 N. Market, Suite 1600, Wichita, KS 67202  
Shannon S. Krysl, Administrative Law Judge  
George Gomez, Director